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16 FORD MOTOR COMPANY

17 UNITED STATES DISTRICT COURT

18 DISTRICT OF NEVADA

19 KATHRYN A. NIEMEYER, individually and  
20 as the Representative of the Estate of  
21 ANTHONY NIEMEYER, MARK NIEMEYER,  
22 JESSICA NIEMEYER, and REBECCA  
23 NIEMEYER,

24 Plaintiffs,

25 vs.

26 FORD MOTOR COMPANY, a Delaware  
27 corporation; THE HERTZ CORPORATION, a  
28 Delaware corporation; HERTZ RENT-A-  
CAR, a corporation; AUTOLIV ASP, INC., a  
Missouri corporation; MORTON  
INTERNATIONAL, INC.; DOES I through  
XX; ROES I through XX; MOES I through  
XX; and POES I through XX, inclusive,

Defendants.

CASE NO. 2:09-cv-2091-JCM-PAL

**DEFENDANT FORD MOTOR  
COMPANY'S PROPOSED JURY  
INSTRUCTIONS CONTESTED BY  
PLAINTIFFS**

Ford Motor Company submits these proposed jury instructions, which are contested by

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1 Plaintiffs, pursuant to this Court's Scheduling Order, and requests that the Court instruct the jury  
2 on the law as set forth herein.

3 DATED this \_\_\_\_ day of July, 2012.

4 SNELL & WILMER L.L.P.

6 By: \_\_\_\_\_

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**FORD'S REQUESTED JURY INSTRUCTION NO. 1**

**Respective Burdens of Plaintiffs; General**

The plaintiffs have the burden of proving by a preponderance of the evidence all of the facts necessary to establish the following:

- Strict Product Liability

**SOURCE:** Nevada Jury Instructions - Civil, 2011 Edition Inst. 4NG.7 (2011) (inserting "Strict Product Liability" and omitting portion regarding a defendant's burden); *see also* CA BAJI 2.60; *Radius v. Travelers Ins. Co.*, 87 F.2d 412 (9th Cir. 1937); *Clark v. State*, 95 Nev. 24, 588 P.2d 1027 (1979); NRS 47.180.

**FORD'S REQUESTED JURY INSTRUCTION NO. 2**

**Elements**

In order to establish a claim of strict liability for a defective product, the plaintiffs must prove the following elements by a preponderance of the evidence:

1. That Ford Motor Company was the manufacturer of the 2007 Ford Focus;
2. That the 2007 Ford Focus was defective;
3. That the defect existed when the 2007 Ford Focus left Ford Motor Company's possession;
4. That the 2007 Ford Focus was used in a manner which was reasonably foreseeable by Ford Motor Company; and
5. That the defect was a proximate cause of the injury to the plaintiffs.

**SOURCE:** Nevada Jury Instructions - Civil, 2011 Edition Inst. 7PL.5 (2011) (inserting "manufacturer", "proximate", "Ford Motor Company" for "the defendant", and "2007 Ford Focus" for "the product"); *see also Allison v. Merck and Co., Inc.*, 110 Nev. 762, 767, 878 P.2d 948, 952 (1994); *see also Shoshone Coca Cola Bottling Co. v. Dolinski*, 82 Nev. 439, 443, 420 P.2d 855, 858 (1966); *Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408, 413, 470 P.2d 135, 138 (1970) (definition of "defective").

**FORD'S REQUESTED JURY INSTRUCTION NO. 3**

**State of the Art Defense**

Ford Motor Company claims that a state of the art defense is applicable to the plaintiffs' claim that the 2007 Ford Focus was defective.

Ford Motor Company is not liable if it proves that the design of the 2007 Ford Focus conformed with the state of the art at the time the product was first sold by Ford Motor Company.

"State of the art" means the technical, mechanical, and scientific knowledge of manufacturing, designing, testing, or labeling the same or similar products which was in existence and reasonably feasible for use at the time of manufacture.

**SOURCE:** RAJI (Civil) 4<sup>th</sup> Product Liability 7 (inserting "Ford Motor Company" for "defendant", "2007 Ford Focus" for "product", and "liable" for "at fault"). Copy of form instruction is attached as **Exhibit 1**.

**FORD'S REQUESTED JURY INSTRUCTION NO. 4**

**Compliance with Regulations**

Compliance or noncompliance with government regulations in place at the time a product was manufactured is relevant to determine whether the product was defective and unreasonably dangerous.

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**SOURCE:** *Robinson v. GGC, Inc.*, 107 Nev. 135, 808 P.2d 522 (1991).

**FORD'S REQUESTED JURY INSTRUCTION NO. 5**

**Compliance with Industry Standards**

Compliance or noncompliance with the industry standards in place at the time a product was manufactured is relevant to determine whether the product was defective and unreasonably dangerous.

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**SOURCE:** *Robinson v. GGC, Inc.*, 107 Nev. 135, 808 P.2d 522 (1991).

**FORD'S REQUESTED JURY INSTRUCTION NO. 6**

**No Duty to Make Product Accident Proof**

A manufacturer of a motor vehicle is under no duty to provide an "accident proof" vehicle, or to render the user of the vehicle safe from all injury or harm.

Under the law, a manufacturer or distributor of a vehicle is only required to design and sell the vehicle so that it is reasonably fit for the ordinary and reasonable purposes for which it was designed to be utilized by members of the general public at the time of manufacture and sale.

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**SOURCE:** *Ward v. Ford Motor Co.*, 99 Nev. 47, 47-48 & n.1, 657 P.2d 95 (1983); *Daly v. General Motors Corp.*, 20 Cal. 3d 725 (1978); *Cavers v. Cushman Motor Sales*, 95 Cal. App. 3d 338; *see also* Devitt, Blackmar, and Wolff, 3 Federal Jury Practice and Instructions § 82.08 (4th ed. 1987) (manufacturer not guarantor); *Raney v. Honeywell*, 540 F.2d 932, 937 (8th Cir. 1976); *Crespo v. Chrysler Corp.*, 75 F. Supp. 2d 225, 227 (S.D.N.Y. 1999).



**FORD'S REQUESTED JURY INSTRUCTION NO. 7**

**Safest Possible Design Not Required**

A manufacturer is not required to produce the safest possible design.

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**SOURCE:** *See Robinson v. GGC, Inc.*, 107 Nev. 135, 139-140, 808 P.2d 522 (1991); *Soule v. General Motors Corp.*, 8 Cal. 4th 548, 559, 572-73 (1994); *Douppnik v. General Motors Corp.*, 225 Cal. App. 3d 849, 861-62 (1990) (rev. denied); *Self v. General Motors Corp.*, 42 Cal. App. 3d 1, 10 (1974) *overruled on other grounds by Soule v. General Motors Corp.*, 8 Cal. 4th 548 (1994).

**FORD'S REQUESTED JURY INSTRUCTION NO. 8**

**Proximate Cause: Definition**

A proximate cause of injury, damage, loss, or harm is a cause which, in natural and continuous sequence, produces the injury, damage, loss, or harm, and without which the injury, damage, loss, or harm would not have occurred.

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**SOURCE:** Nev. J.I. 4.04 (1986); *see also* BAJI 3.75 (1982 revision); *Goodrich & Pennington Mortgage Fund, Inc. v. J.R. Woolard Inc.*, 120 Nev. 777, 784, 101 P.3d 792, 797 (2004) *citing* *Taylor v. Silva*, 96 Nev. 738, 741, 615 P.2d 970, 971 (1980) (*quoting Mahan v. Hafen*, 76 Nev. 220, 225, 351 P.2d 617, 620 (1960)); *Johnson v. Egtegar*, 112 Nev. 428, 915 P.2d 271 (1996) *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 1481, 970 P.2d 98, 107 (1998); RESTATEMENT (SECOND) OF TORTS § 431.

**FORD'S REQUESTED JURY INSTRUCTION NO. 9**

**Defect Must Be Proximate Cause of Plaintiffs' Injuries**

If you find that the 2007 Ford Focus airbag system was defective, but you also find that the plaintiffs would have received the same injuries even if the 2007 Ford Focus airbag system had not been defective, then you must find that the defect was not a proximate cause of such injuries.

**SOURCE:** *Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408, 413, 470 P.2d 135 (1970); *Soule v. General Motors Corp.*, 8 Cal. 4th 548, 559, 572-73 (1994); *Self v. General Motors Corp.*, 42 Cal. App. 3d 1, 10 (1974) *overruled on other grounds by Soule v. General Motors Corp.*, 8 Cal. 4th 548 (1994).

**CERTIFICATE OF SERVICE**

I hereby declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **DEFENDANT FORD MOTOR COMPANY'S PROPOSED JURY INSTRUCTIONS CONTESTED BY PLAINTIFFS** by electronic service (via Case Management/Electronic Case Filing) to the following:

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DATED this \_\_\_\_\_ day of July, 2012.

\_\_\_\_\_  
An Employee of Snell & Wilmer L.L.P.

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